

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>GARY D. OGDEN</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 230,945
<b>EVCON INDUSTRIES, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>AMERICAN INTERNATIONAL GROUP</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals from a preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated March 25, 1998, wherein the Administrative Law Judge allowed in the medical report of Dr. Timothy M. Scanlan but excluded a chemical drug test which was ruled inadmissible pursuant to K.S.A. 1996 Supp. 44-501(d) but which was the basis for Dr. Scanlan's report.

**ISSUES**

Whether the Administrative Law Judge exceeded her jurisdiction by admitting into evidence the medical report of Dr. Timothy Scanlan which was based entirely upon a chemical drug test that was held inadmissible pursuant to K.S.A.1996 Supp. 44-501(d).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant was injured in a work-related accident on November 21, 1997, when he suffered a leg fracture while driving a forklift for respondent. After the injury, claimant voluntarily underwent a urine drug screen at the hospital. The drug test resulted in a positive finding of marijuana and morphine use. The medical reports and medical evidence

from the drug tests were presented to Dr. Scanlan who, while not examining claimant, did analyze the tests. Dr. Scanlan opined that claimant's high level of cannabinoids would have contributed to claimant's injury.

The Administrative Law Judge ruled that the drug test was not properly admissible under K.S.A. 44-501(d) but allowed Dr. Scanlan's opinion regarding whether the use of the drugs contributed to claimant's injury.

Claimant objects to the use of the report by Dr. Scanlan arguing that Dr. Scanlan's opinion is founded upon inadmissible evidence and cannot be considered.

Before the Appeals Board can consider the question regarding the admissibility of the evidence, it must first consider whether it has jurisdiction to review this appeal. In Frazier v. Steel & Pipe Supply Company, Inc., Docket No. 201,049 (September 1995), the Appeals Board was asked to consider whether a foundation laid for the admissibility of a chemical test constituted an appealable issue from a preliminary hearing. In Frazier, the Appeals Board discussed the jurisdictional requirements of K.S.A. 1997 Supp. 44-534a and K.S.A. 1997 Supp. 44-551. The specific jurisdictional issues listed in K.S.A. 1997 Supp. 44-534a have not changed since Frazier. Those issues include whether the employee suffered an accidental injury, whether the injury arose out of and in the course of employment, whether notice was given or claim timely made, or whether certain defenses applied. The issue regarding the admissibility of evidence is not contained in K.S.A. 1997 Supp. 44-534a, and is not a jurisdictional issue under K.S.A. 1997 Supp. 44-551.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated March 25, 1998, remains in full force and effect and the appeal by the claimant from that order should be, and is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1998.

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BOARD MEMBER

c: Tom E. Hammond, Wichita, KS  
Vincent A. Burnett, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director